
ASBESTOS

THE DUTY

TO MANAGE

A MANAGER'S GUIDE



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INTERNATIONAL
WORKPLACE

INTRODUCTION

Despite the importation, supply and use of asbestos being banned in the UK since 1999, it remains the largest single cause of work-related fatalities, with more than 5,000 deaths each year from diseases including mesothelioma, lung cancer and asbestosis.

In fact, studies show that we should expect to continue seeing a rise in cases of asbestos-related diseases in the coming years. This guide takes a look at some of the complexities of managing asbestos in the workplace.



JANE PATCHING
(Tech IOSH)

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THE DUTY TO MANAGE ASBESTOS AT WORK

Currently, the duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2012 and requires the duty-holder to:

- Take reasonable steps to find out if there are asbestos-containing materials (ACM) in non-domestic premises, and, if so, its amount, where it is and what condition it is in.
- Presume materials contain asbestos unless there is strong evidence that they do not.
- Make, and keep up to date, a record of the location and condition of the ACM – or materials presumed to contain asbestos.
- Assess the risk of anyone being exposed to fibres from the materials identified.
- Prepare a plan that sets out in detail how the risks from these materials will be managed.
- Take the necessary steps to put the plan into action.

- Periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up to date.
- Provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

Asbestos-related diseases can take up to 40 years to manifest themselves and therefore it will take a long stretch of time before the asbestos bans start bearing fruit.

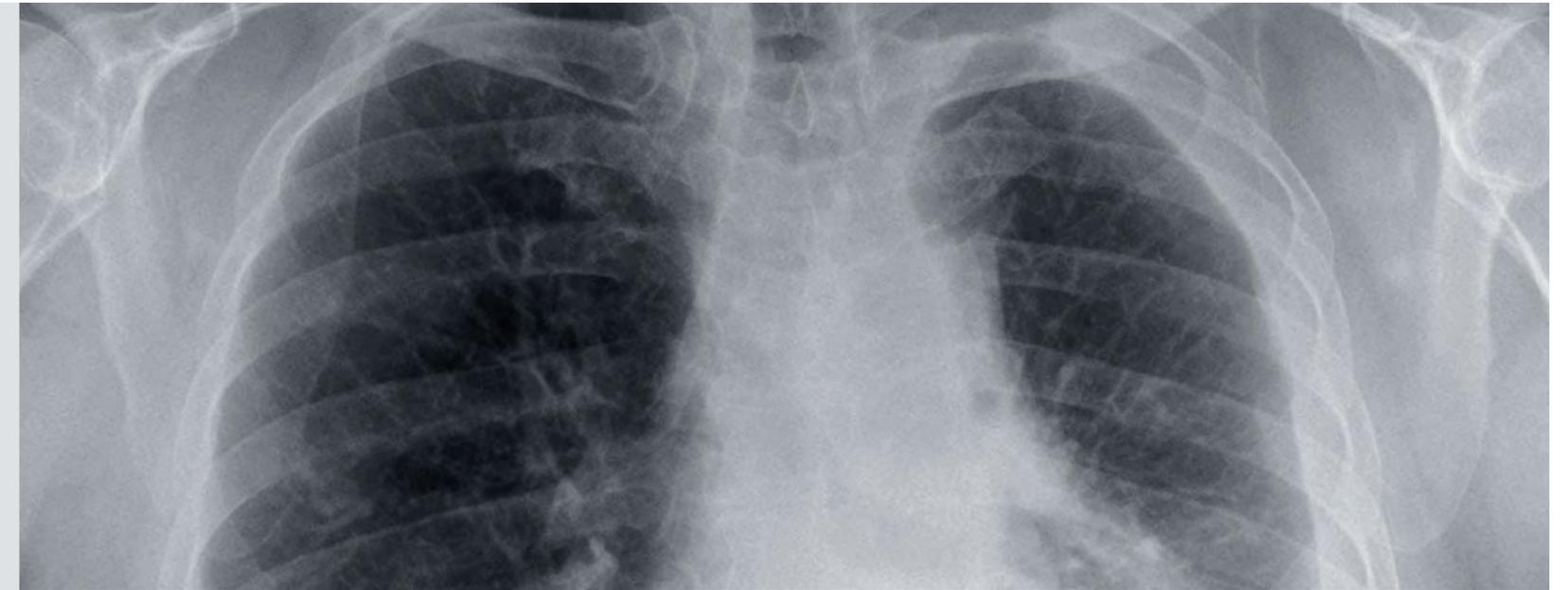
Past employees could revisit old employers with claims of asbestos exposure from many years ago. Mesothelioma sufferers can make compensation claims against the employer for whom they were working at the time they were exposed to asbestos. Mesothelioma has a long latency period – that is the time between a person's initial exposure to asbestos and the development of the disease. This can mean that the employer in question no longer exists. In such cases, the mesothelioma sufferer can submit a claim to their former employer's employers' liability insurer.



WHAT IS MESOTHELIOMA?

Mesothelioma is a form of cancer that takes many years to develop following the inhalation of asbestos fibres but is usually rapidly fatal following the onset of symptoms. Annual deaths in Britain have increased steeply over the last 50 years, a consequence of mainly occupational asbestos exposures that occurred due to the widespread industrial use of asbestos during 1950 to 1980. The latest information from the HSE shows:

- > There were 2,369 mesothelioma deaths in Great Britain in 2019 – this is 7% lower than the annual average number of 2,540 over the period 2012-2018.
- > More than half of annual deaths now occur in those aged over 75. Annual deaths in this age group continue to increase while deaths below age 70 are now decreasing.
- > There were 1,910 new cases of mesothelioma assessed for Industrial Injuries Disablement Benefit (IIDB) in 2020. This compares with 2,025 new cases in 2019.
- > Men who worked in the building industry when asbestos was used extensively in the past continue to be most at risk of mesothelioma.



KEY TAKEAWAYS

- > Asbestos remains the largest single cause of work-related fatalities.
- > Mesothelioma is a form of cancer that takes many years to develop following the inhalation of asbestos fibres but is usually rapidly fatal following the onset of symptoms.
- > Currently, the duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2012.
- > Asbestos-related diseases can take up to 40 years to manifest themselves and therefore it will take a long stretch of time before the asbestos bans start bearing fruit.

WHO DOES ASBESTOS EXPOSURE AFFECT?

Asbestos exposure at work is often considered to only affect workers such as carpenters, plumbers, electricians and other traditional tradesmen. Some people link asbestos exposure to particular types of work such as shipbuilding or the building industry. However, the stark reality of the situation is that every type of worker could potentially be affected by asbestos diseases.

A Derbyshire woman developed fatal cancer after working as a receptionist for a drugs company.

The 73-year-old passed away five years after being diagnosed with mesothelioma. In a statement before her death, Ms Young said she could have inhaled the dangerous substance while working as a receptionist for Rexall Drug Company between 1967 and 1970. She said maintenance work was carried out on asbestos in an old building while she continued to work there.

Stuart Ponting, health and safety law specialist at Walker Morris, commented:

"Employers must be aware that even if the use of asbestos containing materials in the construction and repair of workplaces is a thing of the past, the obligations to manage the risks from possible asbestos fibre exposure remain very much a thing of the present. Many employers will operate from sites where asbestos is present, and whether they are there as tenant or owner, if those premises fall under their control then they need to ensure they know whether asbestos containing materials are present and if so, where they are and how they will manage them appropriately.

"Not only can failures to manage asbestos properly cause serious personal injury, an employer's failure to discharge obligations under the Regulations will leave them liable to investigation by the Health and Safety Executive, possible prosecution in the criminal courts and a fine which might be measured in the millions of pounds."

In November 2020, a makeup consultant who contracted mesothelioma after being exposed to dust when the Boots store she worked in was undergoing construction work in 1975, received a six-figure payout.

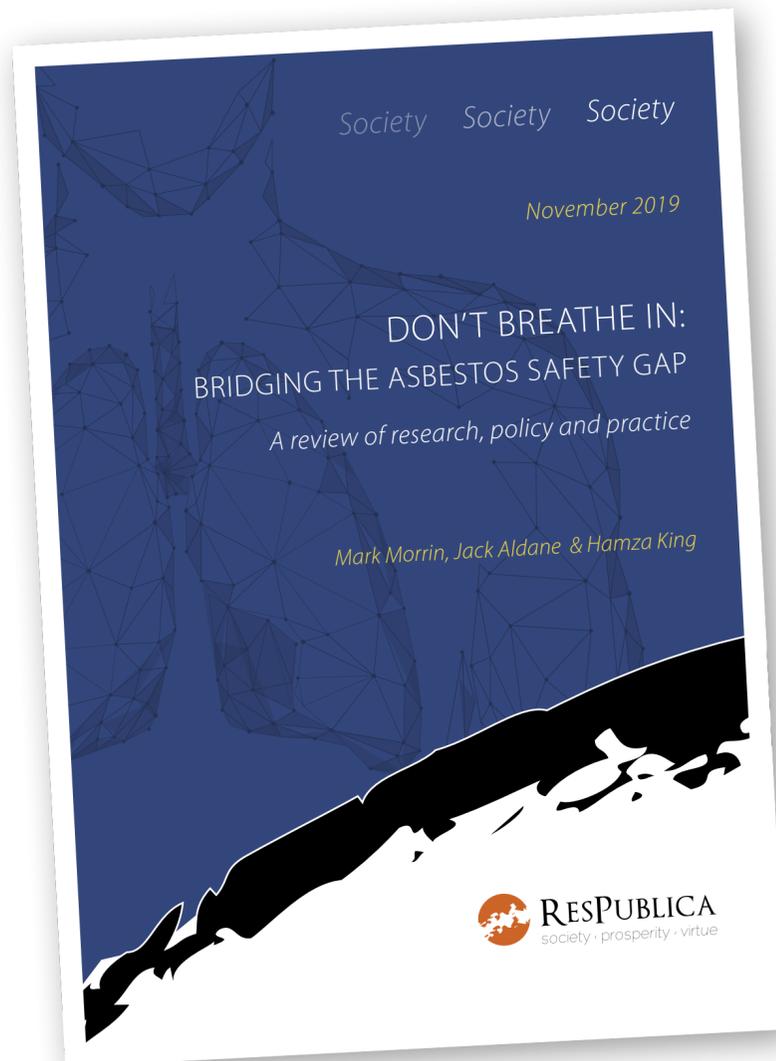
Recalling her time at Boots, Lynne Mitchell said:

"The building works lasted approximately six months and despite the workmen cleaning up regularly, the whole environment remained very dusty. It was important to create a good impression to customers and so I swept and dusted the makeup counters throughout the day."

At the beginning of 2016, Lynne started feeling pain in her side which persisted for months to come. She was diagnosed with mesothelioma at the age of 59. Laura Wilkinson, the specialist asbestos-related disease lawyer at Irwin Mitchell representing Lynne, said:

"Lynne's case vividly highlights the terrible legacy that asbestos has created. While some people may commonly associate asbestos with traditional, heavy industry, its use was widespread in public buildings such as shops, offices, schools and hospitals. What makes Lynne's case more shocking is the relatively young age at which she was diagnosed and that the risks associated with even low-level asbestos exposure should have been known by employers at the time of her exposure."

HOW ASBESTOS IS MANAGED



The Work and Pensions Committee launched an inquiry in 2021 into how the HSE manages the continued presence of asbestos in buildings. The Committee raised concerns with the Government in 2020 about the UK's policy on managing asbestos in buildings, following the publication of [a report by think tank Respublica](#).

The inquiry will examine the current risks posed by asbestos in the workplace, the actions taken by the HSE to mitigate them, and how its approach compares to those taken in other countries.

Rt Hon Stephen Timms MP, Chair of the Work and Pensions Committee, said:

“With the UK death rate from asbestos-related illness the highest in the world, there are serious concerns about how the material is being dealt with compared with how it is managed in other countries, such as France. The HSE is rightly looking into how asbestos can be handled more safely and the Committee's inquiry will help to make sure monitoring and regulations are as effective and safe as they can possibly be.”

THE REPORT INCLUDED THE FOLLOWING RECOMMENDATIONS:

- Government should bring the health and safety regime for the management of asbestos up to the highest international standards.
- Government should establish a central register of all asbestos currently in place in public buildings across the UK (including schools, hospitals and social housing).
- Government should commission a cost-benefit analysis for the removal of all asbestos from public buildings in the UK.
- The HSE should accurately measure and represent fatality figures and the actual harm caused by asbestos exposure.
- The HSE should improve the regime for reporting the disturbance of asbestos materials.

TRAINING

The UK Asbestos Training Association (UKATA) has raised concerns around the lack of asbestos training that has been undertaken since the start of the COVID-19 pandemic. Said Craig Evans, Chief Operating Officer of UKATA:

“Our concern is that the fabric of the many workplaces and public buildings that have been closed during the COVID-19 outbreak will have declined. The very people who manage the buildings may have been furloughed and therefore they will not have been inspected for deterioration of any asbestos present. This increases the risk of exposure to deadly asbestos fibres for the buildings’ users. The latency period of asbestos, coupled with a substantial drop in training numbers, could mean that the UK will be facing a greater amount of deaths from asbestos over the next 15-60 years. It is now vitally important that all building managers and appointed persons ensure that their asbestos training is up-to-date. These are difficult times, but this is a matter of life or death.”

Duty to manage training is a legal requirement, however industry figures show the number of workers who have undertaken asbestos training since March 2021 has steeply declined and is at its lowest level for five years.

International Workplace’s half-day [Asbestos-awareness course](#) covers the properties of asbestos, types, uses and likely occurrences, effects on health, dealing with emergencies and how to avoid risks from building work. The course helps learners to:

- Understand the risks from asbestos in the workplace.
- Identify the different products and uses of asbestos.
- Avoid disturbing asbestos during your work.
- Achieve legal compliance with the statutory requirement.

“Jane was very knowledgeable and led the course in an efficient and effective way. The course covered everything that you needed to know and I found the personal accounts and stories very moving. Jane kept a good pace with frequent questions to ensure we were following and comfortable with how the content was being delivered.”

Bank of England

CONCLUSION

Any changes to asbestos guidance and legislation are likely to have significant consequences for duty-holders when managing asbestos on their premises. In terms of health and safety issues, greater regulation will place more onus on organisations to demonstrate that they have done

all that is 'reasonably practicable' to avert the risk of exposure to asbestos. Organisations do not have to cause actual harm in order to fall foul of health and safety legislation; the mere creation of a risk of harm is sufficient for enforcement action to be taken by the HSE, including a prosecution.



KEY TAKEAWAYS

- > Some people link asbestos exposure to particular types of work such as shipbuilding or the building industry. However, the stark reality of the situation is that every type of worker could potentially be affected by asbestos diseases.
- > The Work and Pensions Committee's inquiry will examine the current risks posed by asbestos in the workplace, the actions taken by HSE to mitigate them, and how its approach compares to those taken in other countries.
- > Greater regulation will place more onus on organisations to demonstrate that they have done all that is 'reasonably practicable' to avert the risk of exposure to asbestos.
- > Industry figures show the number of workers who have undertaken asbestos training since March 2021 has steeply declined and is at its lowest level for five years.

SOURCES

[HSE: Mesothelioma in Great Britain](#)

[HSE: Asbestos – health and safety in the workplace](#)

[HSE: Control of Asbestos Regulations 2012](#)

[Respublica: Don't breathe in: Bridging the asbestos safety gap](#)

[Work and Pensions Committee: Health and Safety Executive approach to asbestos management examined](#)

Asbestos awareness

A half-day course via virtual classroom

Under Regulation 10 of the Control of Asbestos Regulations (CAR) 2012, anyone liable to disturb the fabric of a building, or anyone supervising those people, must have awareness training. This would include maintenance and repair staff, FM operatives, electricians, plumbers, gas fitters, IT installers, fire alarm cabling etc.

Our half-day course covers the properties of asbestos, types, uses and likely occurrences, effects on health, dealing with emergencies, and how to avoid risks from building work.

To find out more about the course, visit www.internationalworkplace.com/in-house-training/risk/asbestos-awareness-classroom or call 0333 210 1995.